STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 5, 1999
v	No. 202932 Eaton Circuit Court
EILEEN M. KLINE, Defendant-Appellant.	LC Nos. 96-000171 FH; 96-020354 FH

Before: Jansen, P.J., and Sawyer and Markman, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of five counts of embezzlement over $100, MCL 750.174; MSA 28.371, and one count of attempted embezzlement over $100, MCL 750.174; MSA 28.371. The trial court sentenced her to three years' probation, with 150 days to be served in jail. Defendant appeals as of right and we affirm.

I

Defendant first argues that the prosecution, through its expert witness, John Bengel, improperly interjected prejudicial statements that suggested that she was guilty of other, uncharged instances of embezzlement. A trial court's decision regarding the admissibility of evidence is reviewed for an abuse of discretion, *People v Smith*, 456 Mich 543, 549; 581 NW2d 654 (1998), while a claim of prosecutorial misconduct is reviewed in context to determine whether the defendant was denied a fair trial, *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995).

In *People v McCartney*, 46 Mich App 691, 692-693; 208 NW2d 547 (1973), a police officer, who was a fingerprint expert, testified that he had recorded the defendant's fingerprints on a police print card two years before the charged crime, that the defendant's inmate number was on the card, and that such cards were used only in felony cases. This Court held (1) that the statements were "improper and prejudicial"; (2) that even assuming, arguendo, that the statements were nonresponsive, this assumption did not help the prosecution, since prosecutors have "a high degree of duty to insure that police officers do not venture into forbidden areas in their testimony"; (3) that the curative

instruction did not eliminate the prejudice; and (4) that because the curative instruction was ineffective, the error was not "harmless beyond reasonable doubt." *Id*. at 693-694.

We find the present case distinguishable from *McCartney*. First, Bengel's statement that during the investigation "we found that there were some instances back in 1993" did not necessarily imply that defendant was suspected of other, uncharged acts of embezzlement. Bengel did not even indicate what type of "instances" he found in 1993; if allowed to complete his sentence, he may have stated that there had been some instances in 1993 for which defendant had been easily cleared and that he therefore did not examine that year. Moreover, Bengel's indication that he "was convinced that the[re] were probably many more" acts of embezzlement was different in substance from a police officer's testimony that a defendant had been jailed during a felony investigation. In the latter case, the jury could infer that police officers and prosecutors had examined the evidence, that the defendant had presented his side of the story, and that the officials had decided there was probable cause to legally arrest and jail him, whereas in the former case, the jury could infer only that one person suspected that there had been more acts of embezzlement.

Second, the two statements to which defendant objects were nonresponsive answers made by a non-police witness. In *McCartney*, *supra* at 694, this Court made a distinction between nonresponsive answers of a police witness and nonresponsive answers of a non-police witness:

> *While we can sympathize with the prosecutors where witnesses other than police officers blurt out volunteered and non-responsive answers*, we are less willing to overlook such responses when police officers are involved. We will not let the prosecutor sit back and ask open-ended questions of police officers and then, thereafter, deny culpability when the officer makes an inadmissible statement. [Emphasis added.]

Because Bengel was not a police witness, because his allegedly prejudicial statements were not responsive to the prosecutor's questions, and because any prejudicial effect of the statements was minimal, we conclude that Bengel's comments did not deprive defendant of a fair trial such that a reversal of her convictions is required.

II

Next, defendant argues that there was insufficient evidence to support three of her convictions. When determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

In *People v Wood*, 182 Mich App 50, 53; 451 NW2d 563 (1990), this Court stated:

> According to CJI 27:1:01, the elements of embezzlement are: (A) the money/personal property in question must belong to the principal; (B) the defendant

> must have had a relationship of trust with the principal because he was an agent, servant, employee, trustee, bailee or custodian of the principal; (C) the money/personal property in question must have come into the defendant's possession or under his charge or control because of that relationship of trust with the principal; (D) the money/personal property must have been dishonestly disposed of or converted to the defendant's own use, or taken or secreted with intent to convert to his own use without the consent of his principal; (E) this act must have been done without the consent of the principal; (F) at the time of the conversion or appropriation to his own use the defendant must have intended to defraud or cheat the principal of some property.

Defendant challenges elements D and F.

The evidence establishing that defendant (the former deputy treasurer of Eaton County) intentionally took for her own use $1,252.53 from the Waverly School District and State of Michigan checks (count II) is as follows: (1) the treasurer's office had no record that either of these checks had been receipted; (2) the Waverly Schools had not received a receipt for the check; (3) the checks were deposited by the treasurer's office on December 12, 1995; (4) the amount of cash deposited by the treasurer's office on this date was $1,252.53 less than the cash receipts for that day, and this amount equaled the sum of the two checks; (5) according to Alvin Starr, defendant's boss, defendant would have been the person who would have initially received the Waverly check; (6) defendant was sometimes given State of Michigan checks when they came into the office; (7) defendant prepared the deposit on December 12, 1995; and (8) defendant had $24,000 in credit card debt and was sometimes late in making her payments. We conclude that this evidence was sufficient to establish that defendant took at least $1,051.95 (the amount of the Waverly check) for her own use from the treasurer's office. Even though the evidence was arguably insufficient to establish that defendant took $200.58 representing the State of Michigan check (because no testimony established that defendant would definitely have received this check initially), this does not invalidate defendant's conviction on count II, because the monetary threshold for felonious embezzlement is only $100. MCL 750.174; MSA 28.371; *Wood, supra* at 52-53.

The evidence establishing that defendant intentionally took $1,253.21 for her own use, representing the Windsor Township check (count III), is as follows: (1) a State Education Tax (SET) check from Windsor Township in the amount of $1,253.21 had been deposited by the treasurer's office on December 6, 1995; (2) defendant was working on December 6, 1995; (3) according to Starr, SET checks were "most often" given to defendant; (4) according to the treasurer's office records, the Windsor check, along with a $9 and a $1 check, had not been receipted, and the amount of cash deposited on December 6 was $1,263.21 (the sum of the three checks) less than the amount of cash that had been receipted; (5) the Windsor Township treasurer did not receive a receipt for the SET check; (6) the check was listed on the Windsor township settlement worksheet that defendant prepared; and (7) defendant could not explain what happened to the record from which she would have gleaned the information regarding that check. This evidence, along with the testimony regarding defendant's financial status, was sufficient to establish that defendant intentionally took $1,253.21 for her own use.

The evidence establishing that defendant intentionally took $2,107.86 for her own use, representing the City of Lansing check (count VI), is as follows: (1) a $2,107.86 SET check from the City of Lansing was deposited by the treasurer's office on January 11, 1995; (2) no record of a receipt for this check could be found; (3) the amount of cash deposited on January 11, 1995 was $2,107.86 less than the total cash receipts; (4) defendant prepared a settlement worksheet that listed the $2,107.86 check; (5) the worksheet listed the check as having been received on September 12, 1994, whereas it had not even been issued until January 10, 1995; and (6) defendant claimed she wrote the wrong date on the worksheet because of human error. This evidence, along with the testimony regarding defendant's financial status, was sufficient to establish that defendant intentionally took $2,107.86 for her own use, since she prepared a settlement worksheet on which the check, with an incorrect date, was listed, even though the treasurer's office had no receipt for the check.

III

Next, defendant argues that the trial court erred in qualifying John Bengel as an expert witness in "fraud examination." Whether a witness is qualified to render an expert opinion is a matter within the discretion of the trial court. *Mulholland v DEC Int'l Corp*, 432 Mich 395, 402; 443 NW2d 340 (1989).

A witness may be qualified as an expert by virtue of "knowledge, skill, experience, training, or education." MRE 702; *Mulholland, supra* at 403. Here, Bengel had experience and training, because he had performed over one hundred fraud examinations and had received training in the area of fraud examination. Moreover, he had an undergraduate degree in business administration and he gave biannual presentations in the area of fraud examination, which was evidence of his knowledge and skill. Finally, that he was not certified as an accountant did not defeat his ability to testify as an expert, because licensing is not a requirement for expert witnesses. *Id.* at 403-406. Given that Bengel had "knowledge, skill, experience, training, education" in the area of fraud examination, the trial court did not abuse its discretion in qualifying him as an expert in that area.

Defendant additionally argues that the trial court abused its discretion by allowing *any* expert testimony regarding fraud examination. Defendant did not object below as to the admissibility of testimony in the area of fraud examination, thus this issue is not preserved for appellate review. Moreover, the testimony was properly admitted. See *King v Taylor Chrysler-Plymouth, Inc*, 184 Mich App 204, 215; 457 NW2d 42 (1990).

IV

Next, defendant argues that the trial court erred in allowing the prosecution to present evidence of defendant's credit card debt. We review a trial court's decision to admit evidence for an abuse of discretion. *Smith, supra*, at 549. We conclude that having $24,000 of credit card debt on more than ten different credit cards is an unusual financial condition, evidence of which was admissible, under *People v Henderson*, 408 Mich 56; 289 NW2d 376 (1980), to show why defendant, in her managerial position, would breach her employer's trust and risk losing her job by embezzling money. The trial court did not abuse its discretion by admitting evidence of defendant's credit card debt at trial.

V

Finally, defendant argues that the prosecutor, during closing argument, improperly interjected his personal belief that defendant had lied on the witness stand. Defendant did not object to this alleged incident of prosecutorial misconduct at trial. Appellate review of allegedly improper prosecutorial remarks is generally precluded absent an objection unless a curative instruction could not have eliminated the prejudicial effect or where failure to consider the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Here, the allegedly improper statement was nothing more than a reasonable inference based on the evidence introduced at trial. Therefore, the statement does not mandate reversal of defendant's convictions.

Affirmed.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Stephen J. Markman